UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA

In re **ROBERT J. REESER**, and **BARBARA REESER**, Debtors.	Case No. **05-61614-7**

MEMORANDUM OF DECISION

At Butte in said District this 26th day of September, 2005.

On July 12, 2005, Debtors filed a motion for sanctions for violating the automatic stay against Clark Fork Valley Hospital and Collection Professionals, Inc. On July 25, 2005, Collection Professionals, Inc., filed a response and requested a hearing for September 8, 2005. The Court conducted a hearing in Missoula on September 8, 2005. Harold V. Dye ("Dye") appeared on behalf of the Debtors, who were not present. Bruce Gobeo ("Gobeo") appeared on behalf of Collection Professionals, Inc. ("CPI"). Exhibits 1 through 6 were admitted without objection. No witnesses testified. Dye and Gobeo presented legal argument. After review of the motion for sanctions, the exhibits, the objection, the record and applicable law, this matter is ready for decision. For the reasons set forth below Debtors' motion for sanctions is granted.

This Court has jurisdiction of this Chapter 7 case under 28 U.S.C. § 1334(a). Debtors motion for sanctions is a core proceeding under 28 U.S.C. § 157(b)(2) and 11 U.S.C. § 362(h). This memorandum of decision includes the Court's findings of fact and conclusions of law. These contempt proceedings are governed by F.R.B.P. 9020 and 9014.

FACTS

Debtors filed their bankruptcy petition for relief under Chapter 7 of the Bankruptcy Code on May 20, 2005. Debtors listed Clark Fork Valley Hospital on their creditor mailing list. The Notice of Commencement of a Bankruptcy Case was sent to Clark Fork Valley Hospital by the Court on May 20, 2005. Clark Fork Valley Hospital received notice of the debtors' bankruptcy and the automatic stay directly from the bankruptcy court. *See* BNC Systems Certificate of Service (5/20/2005). The Court sent the notice to Clark Fork Valley Hospital at PO Box 768, Plains, MT 59859-0768. *Id*. On May 25, 2005, by email, Maureen Baker, identified as being with Clark Fork Valley Hospital, notified a person merely identified as Karinz@cpicollects.com, of the following: "THis [sic] was Banko filed 5/20/05 case #05-61614. Robert & Barbara Reeser. Thanks Maureen." Exhibit 4. On or about May 27, 2005, CPI, as assignee to Clark Fork Valley Hospital, sent a series of demands to Debtors attempting to collect payment on the debt assigned to it by Clark Fork Valley Hospital. Exhibit 1. On June 8, 2005 , Debtors' attorney, Harold V. Dye, sent a letter to CPI, at the address provided in its payment demand, informing CPI of Debtors' bankruptcy filing, providing the date of Debtors' bankruptcy petition filing and warning CPI of a automatic stay violation and the consequences of further violations of the automatic stay. Exhibit 2. Despite CPI receiving a letter from Debtor's attorney informing it of Debtors' bankruptcy filing and the imposition of the automatic stay under 11 U.S.C. § 362, on or about June 30, 2005, CPI, as assignee of Clark Fork Valley Hospital, sent an additional payment demand to Debtors. Exhibit 3. Clark Fork Valley Hospital assigned its account for these Debtors to CPI. Exhibits 5 and 6.

As noted above, the official Notice of Commencement of the case was mailed to

creditors, including Clark Fork Valley Hospital, on May 20, 2005. The Notice, on page 1, advises creditors in bold print: "Creditors May Not Take Certain Actions", followed by the explanation: "The filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized." On page 2 of the Notice the following admonition and warning is set forth:

> "Creditors May Not Take Certain Actions," Prohibited collection actions are listed in Bankruptcy Code §362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.

No contention exists in the record that Clark Fork Valley Hospital and CPI did not receive notice of Debtors' bankruptcy filing. In CPI's response and brief, CPI admits that

> [o]n or about May 27, 2005, first notice letters were automatically mailed to Debtors. On or about June 8, 2005, Debtors' attorney mailed a letter to Collection Professionals, Inc. (hereinafter "CPI") alerting them of the Debtors' pending bankruptcy. On or about June 30, 2005, another letter was automatically generated and mailed to the Debtors.

At the hearing Dye stipulated with Gobeo that Clark Fork Valley Hospital was an assignor of the account to CPI and that Dye stated that Debtors withdrew their motion for sanctions against Clark Fork Valley Hospital. Given Debtors' withdrawal of the motion for sanctions against Clark Fork Valley Hospital, only the actions taken by CPI will be considered in this memorandum.

CONTENTIONS

Debtors contend that CPI violated the automatic stay by mailing two notices demanding

payment after notice of the bankruptcy filing was provided to CPI. CPI contends that its "actions or omissions were not taken as a willful action to intentionally violate the automatic stay . . . [as] [t]he [notices were] sent to the Debtors as part of an automated system." CPI further contends and justifies its actions that ". . . despite the best procedures human error by two different employees created a situation whereby the automated system did not receive the necessary code identifying the Reesers' account as bankruptcy. . . . [CPI admits in its brief that] [t]he proper code would have overridden the automated command to print the [notices] for mailing." CPI's Brief, page 3.

DISCUSSION

I. Automatic Stay – § 362(a).

The Debtors' filing of their chapter 7 bankruptcy petition on May 20, 2005, gave rise to an "automatic stay". 11 U.S.C. § 362(a). The Ninth Circuit construed the automatic stay in *In re Gruntz*, 202 F.3d 1074, 1081-82 (9th Cir. 2000):

> The automatic stay is self-executing, effective upon the filing of the bankruptcy petition. *See* 11 U.S.C. § 362(a); *The Minoco Group of Companies v. First State Underwriters Agency of New England Reinsurance Corp.* (*In re The Minoco Group of Companies*), 799 F.2d 517, 520 (9th Cir.1986). The automatic stay sweeps broadly, enjoining the commencement or continuation of any judicial, administrative, or other proceedings against the debtor, enforcement of prior judgments, perfection of liens, and "any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case." 11 U.S.C. § 362(a)(6).

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") explained the automatic stay in *Balyeat Law Offices, P.C. v. Campbell*, 14 Mont. B.R. 132, 136-37 (9th Cir. BAP 1995):

> "Congress' intent in enacting § 362(a) is clear--it wanted to stop collection efforts for all antecedent debts." *Gonzales v. Parks*, 830 F.2d 1033, 1035 (9th Cir. 1987) (*quoting In re M. Frenville Co., Inc*., 744 F.2d 332, 334 (3rd Cir. 1984). *cert. denied*, 469 U.S. 1160 (1985). "Section 362(a) automatically stays a wide array of collection and enforcement proceedings." *Pennsylvania Dept. of Public Welfare v.*

> *Davenport*, 49 5 U.S. 552, 560 (1990). See also *Delpit v. C.I.R.*, 18 F.3d 768, 770 n.1 (9th Cir. 1994). "Section 362 is extremely broad in scope and should apply to almost any type of formal or informal action." *Id.* at 771 (*quoting 2 COLLIER ON BANKRUPTCY*, § 362.04 at 362-34 (15th ed. 1993). It "prohibits acts that, but for the stay, would be lawful." *In re Zartun*, 30 B.R. 543, 545 (9th Cir. BAP 1983). The stay is created for the benefit of the debtor, the debtor's property and the debtor's estate. *In re Casqul of Nevada, Inc.*, 22 B.R. 65, 66 (9th Cir. BAP 1982).

The Ninth Circuit has repeatedly reiterated the broad scope of the automatic stay as "one of the most important protections in bankruptcy law." *See In re Risner*, 317 B.R. 830, 835 (Bankr. D. Idaho 2004), quoting *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214-15 (9th Cir. 2002); *Hillis Motors, Inc. v. Hawaii Auto Dealers' Assoc.*, 997 F.2d 581, 585 (9th Cir. 1993). Actions taken in violation of the automatic stay all are void, not merely voidable. *Gruntz*, 292 F.3d at 1082; *40235 Washington Street Corp. v. Lusardi*, 329 F.3d 1076, 1082 (9th Cir. 2003); *Schwartz v. United States*, 954 F.2d 569, 570-71, 575 (9th Cir.1992); *In re Deines*, 17 Mont. B.R. 114, 115 (Bankr. D. Mont. 1998); *Hillis Motors, Inc. v. Hawaii Auto Dealers' Assoc.*, 997 F.2d at 586.

At footnote 5 *Risner* quotes *Eskanos v. Adler* that: "Consistent with the plain and unambiguous meaning of the statute, and consonant with Congressional intent, we hold that § 362(a)(1) imposes an affirmative duty to discontinue post-petition collection actions." 317 F.3d at 835 n.5, quoting *Esklanos v. Adler*, 309 F.3d at 1215. A recent district court decision from Arizona explains:

> The Ninth Circuit's holding in *Eskanos* is consistent with established precedent in other jurisdictions. Based on the language of § 362(a)(1), many courts have emphasized the obligation of creditors to take affirmative action to terminate or undo any action that violates the automatic stay. *See, e.g., Patton v. Shade*, 263 B.R. 861 (C.D.Ill.2001); *Utah State Credit Union v. Skinner (In re Skinner)*, 90 B.R. 470, 480 (D.Utah 1988); *In re McCall-Pruitt*, 281 B.R. 910, 911-912 (Bankr.E.D.Mich.2002); *In re Briskey*, 258 B.R. 473, 476 (Bankr.M.D.Ala.2001); *Rainwater v. Alabama (In re Rainwater)*, 233 B.R. 126, 156 (Bankr.N.D.Ala.1999); *vacated on other grounds*, 254 B.R. 273 (N.D.Ala.2000); *Kirk v. Shawmut Bank (In re Kirk)*, 199 B.R. 70, 72

(Bankr.N.D.Ga.1996); *Connecticut Pizza, Inc. v. Bell Atlantic-Washington, D.C., Inc. (In re Connecticut Pizza, Inc.)*, 193 B.R. 217, 228 (Bankr.D.Md.1996); *James v. Draper (In re James)*, 112 B.R. 687, 700 (Bankr.E.D.Pa.1990), *aff'd in part, vacated in part on other grounds*, 120 B.R. 802 (E.D.Pa.1990), *judgment rev'd on other grounds*, 940 F.2d 46 (3d Cir.1991); *Clemmons v. United Student Aid Funds, Inc. (Matter of Clemmons)*, 107 B.R. 488, 490 (Bankr.D.Del.1989); *Adams v. Philadelphia Hous. Auth. (In re Adams)*, 94 B.R. 838, 851 (Bankr.E.D.Pa.1989).

> The responsibility is placed on the creditor and not on the debtor because to place the burden on the debtor to undo the violation " 'would subject the debtor to the financial pressures the automatic stay was designed to temporarily abate.' " *Ledford v. Tiedge (In the Matter of Sams)*, 106 B.R. 485, 490 (Bankr.S.D.Ohio 1989) (quoting *In re Miller*, 22 B.R. 479, 481 (D.Md.1982)). "One of [the] purposes of [the automatic stay] is to protect the debtor from having to convince a state court judge that the state court matter should not proceed." *In re Sutton*, 250 B.R. at 774 (citing *In re Weisberg*, 218 B.R. 740, 752 (Bankr.E.D.Pa.1998)). Though "state court judges generally refrain from proceeding once they are made aware of a bankruptcy filing, the burden is on the creditor not to seek relief against a debtor in violation of the stay." *Id.* As the bankruptcy court in *Elder v. City of Thomasville (In re Elder)*, 12 B.R. 491 (Bankr.M.D.Ga.1981) pointed out: "The creditor sets in motion the process. The creditor is very much in the driver's seat and very much controls what is done thereafter if it chooses. If the continuation is to be stayed, it (the creditor) cannot choose to do nothing and pass the buck to the debtor."

In re Johnston, 321 B.R. 262, 283-84 (D. Ariz. 2005).

Under the above authority, CPI had an affirmative duty to discontinue any further collection and demand notifications. CPI failed its duty to discontinue postpetition collection actions in violation of the automatic stay under *Eskanos v. Adler.*

Exhibit 4 absolutely establishes that personnel at CPI had notice of Debtors' bankruptcy filing prior to the first payment demand notice, Exhibit 1, being sent to Debtors. CPI provided no evidence at the hearing to suggest that its personnel never received Exhibit 4. In fact, CPI in its brief on page 4, lines 12 - 16, admits it had notice of Debtors' bankruptcy filing prior to sending the two notices. CPI not only admits it had notice of the filing prior to the first notice, it still sent

an additional letter, Exhibit 3, on June 30, 2005, even after receiving Dye's letter, dated June 8, 2005. The Court does note that Gobeo did ask the Court to consider the Affidavit by Karin Zito, dated July 22, 2005, but the Court informed Gobeo that such Affidavit would not be admitted as no opportunity for cross examination could occur. Gobeo then asked if it could call a witness, Dye objected as no witness list had been presented by CPI and the Court sustained the objection. The Court has considered the statements and contentions set forth in CPI's brief and finds the statements made in the affivadit, which was not admitted, would not have improved CPI's success in defending Debtors' motion for sanctions. The Exhibits establish the violation.

II. § 362(h) – Willful Violation of the Stay.

This Court construed § 362(a) & (h) in *In re Reece*, 15 Mont. B.R. 474, 477-78 (Bankr. D. Mont. 1996):

> As to the relevant Bankruptcy Code provisions, when a debtor files a bankruptcy petition, a stay is automatically imposed applicable against all creditor collection activity. 11 U.S.C. § 362(a). The stay is effective upon the date of the filing of the petition; and does not depend on formal service of process. *In re Smith*, 876 F.2d 524, 526 (6th Cir.1989). Furthermore, the Code requires the creditor, pursuant to § 362(d), to take affirmative action to obtain relief from stay from a bankruptcy court. In the absence of affirmative action on the part of the creditor to obtain relief from stay, § 362(a) prevents the creditor from attempting to enforce its rights against a debtor. See *In re Sharon*, 200 B.R. 181, 187 (Bankr. S.D.Oh. 1996).
>
> Turning to the law governing violation of the automatic stay, 11 U.S.C. § 362(h), this Court has held:
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> > To be actionable, a violation of the automatic stay must be "willful." In *In re Bloom*, 875 F.2d 224, 227 (9th Cir.1989), the term "willful", as used in § 362(h) was addressed and defined: "This circuit has not defined 'willful' as it is used in subsection (h). A useful definition, which we now adopt, was provided by the bankruptcy court for the district of the District of Columbia: A 'willful violation' does not require a specific intent to violate the automatic stay. Rather, the statute provides for damages upon a finding that the defendant knew of the automatic stay and that the defendant's

> actions which violated the stay were intentional. Whether the party believes in good faith that it had a right to the property is not relevant to whether the act was 'willful' or whether compensation must be awarded. *Inslaw, Inc. v. United States* (*In re Inslaw, Inc.*,), 83 B.R. 89, 165 (Bankr.D.D.C.1988)."

In re Christopherson, 8 Mont. B.R. 213, 111 B.R. 920, 922 (Bankr. D. Mont. 1990).

The Court further explained:

> "[T]he relief provided for willful violation of the stay under 11 U.S.C. § 362(h) is mandatory" since § 362(h) supplements but does not replace the pre-existing remedy of civil contempt. *In re Lile*, 103 B.R. 830, 836 (Bankr.S.D.Tex.1989). Thus, when a party acts with knowledge of a pending bankruptcy, a violation of the stay is considered willful and damages must be assessed, *Id*. at 836, for "[T]he creditor takes the risk of being assessed for damages if he fails to obtain clarification from the bankruptcy court." *Id*. at 837, citing *In re Clark*, 49 B.R. 704, 707 (Bankr.D.Guam 1985); and *In re Pody*, 42 B.R. 570, 573-574 (Bankr.N.D.Ala.1984). *Lile*, supra, at 841 further states that where a Debtor is forced to resort to the courts to enforce his right, attorney's fees should be awarded to the Debtor under § 362(h). See also, *In re Price*, 103 B.R. 989 (Bankr.N.D.Ill.1989).

Id. at 923.

The reasoning contained in *Bloom* concerning the definition of "willful" does not help CPI.. The above test for willful violation under § 362(h) – (1) that the creditor knew of the stay, and (2) the creditor's actions which violated the stay were intentional, was followed in *In re Roman*, 283 B.R. 1, 8 (9th Cir. BAP 2002), which also noted the above standard, that lack of specific intent to violate the stay is not a required element to find a willful violation, and that "it is clear that once a creditor or actor learns or is put on notice of a bankruptcy filing, any actions intentionally taken thereafter are 'willful' within the contemplation of § 362(h)." *Risner*, 317 B.R. at 835; *Eskanos & Adler*, 398 F.3d at 1214-15. In *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191 (9th Cir. 2003), the Ninth Circuit noted that § 362(h) provides for damages for willful violation of the stay

upon a finding that the defendant knew of the automatic stay and that the defendant's actions which violated the stay were willful. *See Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 191 (9th Cir. 1995) (cited in *Roman*, 283 B.R. at 12-13). Further, a party with knowledge of bankruptcy proceedings is charged with knowledge of the automatic stay. *Dyer*, 322 F.3d at 1191, *citing Pinkstaff v. United States*, 974 F.2d 113, 115 (9th Cir. 1992).

No dispute exists in the record that CPI knew of the automatic stay, or that the notices were intentionally even though automatically sent given alleged personnel actions or omissions that may have been inadvertent. The Court concludes that sending the notices by CPI were willful.

CPI cannot escape the consequences of willful violations of the stay simply by claiming mistake. On page 3 of CPI's brief, it asserts that because of human error and an automated system, a proper code was not imputed. The Bankruptcy Appellate Panel recently considered a similar situation involving a computer failing to recognize a debtor's surname and a less formal variant of the debtor's first name. The panel, in *Associated Credit Services, Inc., v. Campion (In re Campion)*, 294 B.R. 313, 319 (9th Cir. BAP 2003), concluded

> [n]or is it any excuse that Associated Credit was betrayed by its computer. A creditor's "internal disorder does not excuse it from violating the automatic stay." *Eskanos v. Adler*, 309 F.3d at 1215. The computer tale is one of internal disorder.
>
> Moreover, stay violations attributable to a computer are not "'inadvertent' . . . acts taken without knowledge of the existence of the stay." *Franchise Tax Bd. V. Roberts (In re Roberts)*, 175 B.R. 339, 344 (9th Cir. BAP 1994).
>
> We perceive no difference as a practical matter between a computer program that does not perform tasks accurately and a clerical employee who does not perform tasks accurately. In either event, the employer bears the risk of the consequences.
>
> * * *

> Once a creditor knows that the automatic stay exists, the creditor knows that the automatic stay exists, the creditor bears the risk of all intentional acts that violate the automatic stay regardless of whether the creditor means to violate the automatic stay. *See, e.g., Goodman*, 991 F.2d at 618.

In rejecting an argument that notice was sent to an improper corporate address, one court aptly noted:

> [W]hile an octopus may have eight legs, it is still the same octopus. As a result, bankruptcy law not only requires, but demands, that companies, whether large or small, have in place procedures to ensure that formal bankruptcy notices sent to an internally improper, but otherwise valid corporate address are forwarded in a prompt and timely manner to the correct person/department. As a consequence, Ocwen's defense that its collection efforts against the Debtors were merely the result of a flaw in its internal organizational structure--the argument that the right hand does not know what the left hand is doing--falls on deaf ears.
>
> This rule has been universally followed by other bankruptcy courts, and is really just an extension of the principle that corporations are expected to have in place procedures to ensure that they comply with all areas of the law.

In re Perviz, 302 B.R. 357, 367 (Bankr. N.D. Ohio 2003). Such reasoning is analogous to a professional collection agency, with six collection offices in two states. Furthermore, CPI, in disputing Debtors' motion, may decide that its fight against Debtors' motion for sanctions "is largely the self-inflicted consequence of [its] litigation choices in how it went about trying to extricate itself from the consequences of its internal disorder." *Campion*, 294 B.R. at 318.

Simply put, the evidence is uncontroverted that CPI received notice that Debtors had filed a chapter 7 petition, but its notices demanding payment continued for six weeks. An innocent stay violation can become willful if the creditor fails to remedy the violation after receiving notice of the stay. *In re Del Mission Ltd.*, 98 F.3d 1147, 1151 (9th Cir. 1996); *Abrams v. Southwest Leasing and Rental Inc. (In re Abrams)*, 127 B.R. 239, 241-44 (9th Cir. BAP 1991). CPI's continued notices demanding payment were intentional and with knowledge of the

bankruptcy stay, and as such constitute willful violations of the stay. *Eskanos & Adler*, 398 F.3d at 1214-15; *In re Dyer*, 322 F.3d at 1191; *Roman*, 283 B.R. at 8; *Risner*, 317 B.R. at 835; *Reece*,15 Mont. B.R. at 477-78.

In re Forty-Five Fifty-Five, Inc., 111 B.R. 920, 923 (Bankr. D. Mont. 1990) explains that "when a party acts with knowledge of a pending bankruptcy, a violation of the stay is considered willful and damages must be assessed." *In re Lile*, 103 B.R. at 836. A party's violation of the stay may be willful even if a creditor believed itself justified in taking an action found to be violative of the automatic stay. *In re Cinematronics, Inc.,* 111 B.R. 892, 900 (Bankr. S.D. Cal. 1990), the court wrote:

> The creditor takes a calculated risk where it undertakes to make its own determination of what the stay means. *In re Gray*, 97 B.R. 930, 936 (Bankr. N.D. Ill. 1989). To disagree with Theodore Roosevelt, at least when the automatic stay is concerned, it is far better to be a "timid soul" who seeks a court determination of the limits of the stay, rather than to fail "while daring greatly".

The BAP explained in *Campbell*, 14 Mont. B.R. at 149-50:

> Section 362(h) provides:
>
> > An individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
>
> "Whether the party believes in good faith that it had the right to property is not relevant to whether the act was willful or whether compensation must be awarded." [*In re Abrams*, 127 B.R. 239, 243 (9th Cir. BAP 1991)]. A willful violation of the stay occurs where the party accused of such violation acts intentionally with the knowledge that the automatic stay is in place. Specific intent to violate the stay is not required. *Bloom*, 875 F.2d at 226.

In re McMillan, 18 Mont. B.R. 21, 29 (Bankr. D. Mont. 1999).

Under the above authority, § 362(h) permits a person injured by any willful violation to recover actual and punitive damages. *Eskanos & Adler*, 309 F.3d at 1215. The BAP has noted that a debtor's attorney fees and costs are "actual damages" under § 362(h). *Roman*, 283 B.R. at 10. An award of attorney's fees and costs in addition to actual damages is mandatory upon finding a willful violation of the stay under § 362(h). *Roman*, 283 B.R. at 9, 15; *In re Walsh*, 219 B.R. 873, 876 (9th Cir. BAP 1998). The Court having found willful violations of the stay by CPI for its postpetition notices demanding payment Debtors are entitled to an award of their actual damages, including fees and costs. In a report to the Court, doc. # 11, filed September 6, 2005, Debtors informed the Court that they would be unable to travel to Missoula for any hearing and therefore were only requesting actual damages of attorneys fees and costs and were waiving any other actual damages.

III. Punitive damages.

Debtors, in their motion, do not request punitive damages, only actual damages including attorney's fees and costs. At the hearing Dye, represented to the Court that he concluded the facts did not warrant punitive damages as CPI's violation of the stay did not constitute malicious, wanton or oppressive or egregious and intentional acts as contemplated by *In re Ramirez*, 183 B.R. 583, 590 (9th Cir. BAP 1995) and *In re McHenry*, 179 B.R. 165, 168 (9th Cir. BAP 1995). Consequently, this Court will not consider any award for punitive damages.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this contested matter pursuant to 28 U.S.C. §§ 1334 and 157.

2. Debtors' motion for sanctions is a core proceeding under 28 U.S.C. § 157(b).

3. Debtors satisfied their burden of proof by a preponderance of the evidence to show

that CPI willfully violated the stay by continuing to send notice demanding postpetition payment and that actual damages, including attorney's fees and costs are appropriate as sanctions under 11 U.S.C. § 362(h).

IT IS ORDERED that a separate Order/Judgment shall be entered granting Debtors' motion for sanctions against CPI; that a separate Order/Judgment shall be entered for the Debtors and against CPI in an amount to be determined subsequent to the submission of an affidavit for fees and costs, or after hearing, if a response and request for hearing is filed pursuant to the Court's local rules; that Debtors' attorney shall submit an affidavit of fees and costs for services rendered in this contested matter to the Court for consideration, with a copy to CPI's attorney with a 10-day notice as provided under Mont. LBR 9013-1; that CPI shall if it has any dispute with the amount of requested fees and costs file within said 10-day period a response and request a hearing which shall be heard on **Thursday, October 13, 2005, at 9:00 a.m.**, or as soon thereafter as counsel can be heard, in the BANKRUPTCY COURTROOM, RUSSELL SMITH COURTHOUSE, 201 EAST BROADWAY, MISSOULA, MONTANA.

BY THE COURT

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana